

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.606(b)
Table of Allotments,
Television Broadcast Stations
(Longview, Texas)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MB Docket No. 03-121
RM-10707

To: Chief, Video Division
Media Bureau

COMMENTS OF CIVCO, INC.

CivCo, Inc. ("CivCo"), permittee of station KLTV-DT (Tyler, Texas), by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules (47 C.F.R. §§ 1.415, 1.420), hereby respectfully submits these comments regarding the above-captioned *Notice of Proposed Rule Making* ("Notice") released by the Media Bureau on May 21, 2003. The *Notice* seeks comment on the *Petition for Rule Making* ("Petition") filed by Estes Broadcasting, Inc. ("Estes"), permittee of channel 54+ at Longview, Texas. In the *Petition*, Estes requests the substitution of channel 38 for channel 54+.

Any action in this proceeding necessarily must be contingent upon and subject to finality of the prior rulemaking in MM Docket No. 01-244, in which the Bureau granted CivCo's petition and request to substitute Channel 10 for KLTV-DT in lieu of the initially allotted Channel 38.¹ KLTV-DT's surrender of Channel 38 subject to the finality of the MM Docket No.

¹ Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Tyler, Texas) and (Lufkin, Texas), MM Docket Nos. 01-244 and 01-245, *Report and Order*, 17 FCC Rcd 19452 (VSD 2002) ("Order").

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01-244 proceeding allows Estes, in turn, to petition for assignment of Channel 38 for the Longview, Texas station. Although the *Order* is effective, it is not yet final because the Bureau has not issued a decision regarding a petition for reconsideration filed by International Broadcasting Network on November 8, 2002.² The related construction permit application seeking authority to construct KLTV-DT on Channel 10 remains pending.³

Until the *Order* is final, the Bureau's decision in the instant allotment proceeding must be subject to the outcome in MB Docket No. 01-244, and the Bureau should so condition any action it takes in this proceeding. In a recent decision, the Bureau granted an FM allotment rulemaking but subjected it to the outcome of an earlier allotment proceeding that was effective but not yet final.⁴ In its decision, the Bureau stated: "we caution parties that any contingent rulemaking proposals would be granted subject to the outcome of earlier allotment proceedings that are effective but not final."⁵ The Commission had issued a similar warning previously when it wrote that "parties electing to proceed before [an] allotment decision is final do so at their own risk and must bear the costs of any subsequent action reversing or revising the allotment decision."⁶ CivCo does not otherwise object to the proposed channel change.

² Public Notice, "Petition for Reconsideration of Action in Rulemaking Proceeding," Report No. 2588 (dated Dec. 16, 2002).

³ See FCC File No. BMPCDT-20000501ADS. The *Order* directed CivCo to submit to the Commission a minor change application for construction permits specifying DTV channel 10 for KLTV-DT. On January 9, 2003, CivCo notified the Commission by letter that the pending DTV construction permit application already satisfied the *Order*'s requirement.

⁴ Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Auburn, Northport, Tuscaloosa, Camp Hill, Gardendale, Homewood, Birmingham, Dadeville, Orrville, Goodwater, Pine Level, Jemison, and Thomaston, Alabama), *Memorandum Opinion and Order*, MM Docket No. 01-104, RM-10103, RM-10323, RM-10324 (rel. May 20, 2003).

⁵ *Id.* at ¶ 24.

⁶ Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stays of Certain Allotment Orders, *Report and Order*, 11 FCC Rcd 9501 at ¶ 11 (1996).

Accordingly, consistent with Commission policy, the Bureau must subject the outcome of this instant proceeding to the outcome and finality of the earlier – but now interrelated – rulemaking proceeding in MB Docket No. 01-244. If events somehow unfold such that a construction permit for the Longview station on Channel 38 is issued prior to the finality of the MM Docket No. 01-244 proceeding or the issuance of a construction permit for KLTV-DT on Channel 10, any decision by Estes to construct would be at its own risk and the Commission should so condition any action it may take in this proceeding.

Respectfully submitted,

CIVCO, INC.

By: 

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Dated: June 26, 2003

CERTIFICATE OF SERVICE

I, Louis L. Neal, Jr., a secretary at the law firm of Dow, Lohnes & Albertson PLLC, do hereby certify that on this 26th day of June, 2003, the foregoing "COMMENTS OF CIVCO, INC." were served via first class mail to the following:

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